



POLICE DEPARTMENT

July 30, 2010

MEMORANDUM FOR: Police Commissioner

RE: Police Officer Wayne Roberson
Tax Registry No. 911557
Transit District 3
Disciplinary Case No. 85413/09

The above-named member of the Department appeared before the Court on April 13, 2010, charged with the following:

1. Said Police Officer Wayne Roberson, while assigned to Transit Bureau District #3, on or about and between March 14, 2007 and December 1, 2008, did wrongfully and without just cause engage in off-duty employment without authority or permission to do so.

P.G. 205-40 Page 1, Paragraph 1 OFF DUTY EMPLOYMENT
PERSONNEL MATTERS

2. Said Police Officer Wayne Roberson, while assigned as indicated above, on July 13, 2006 and December 16, 2008 did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer wrongfully and improperly resided in a New York City Housing Authority rent subsidized apartment.

P.G. 203-10 Page 1, Paragraph 5 PROHIBITED CONDUCT

3. Said Police Officer Wayne Roberson, while assigned as indicated above, on July 13, 2006 and December 16, 2008 did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer wrongfully and improperly failed to disclose his residency and income to the New York City Housing Authority prior to and while residing in a New York City Housing Authority rent subsidized apartment.

P.G. 203-10 Page 1, Paragraph 5 PROHIBITED CONDUCT

COURTESY • PROFESSIONALISM • RESPECT

The Department was represented by Vivian Joo, Esq., Department Advocate's Office, and the Respondent was represented by John Tynan, Esq.

The Respondent, through his counsel, entered a plea of Guilty to Specification 1 and 3, and Specification 2 was dismissed on the Department's motion. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

The Respondent testified in his own behalf.

The Respondent

The Respondent is a 17-year member of the Department currently assigned to Transit Bureau District 3.

The Respondent is married and his wife's maiden name was [REDACTED]. The Respondent has known her for 19 years and they have been married for five months. When asked if he had any off-duty employment outside of the Department, the Respondent stated that he worked for a security firm, but no longer works for them. The Respondent stated he was not engaged in any off-duty employment between March 2007 and December 2008. His testimony was that he was not involved in any business outside of the Department during that time.

Upon being asked if he had any relationship to a business called "Simplicities," the Respondent stated that his name was on the paperwork for "Simplicities," which is his wife's bath products and chocolates business. At the time, Davis and the Respondent were dating and had plans to get married. Davis put the Respondent's name on the paperwork so that in the event that something happened to her, the ownership of the business would be primarily the Respondent's. Then "there wouldn't be a problem as far as her family fighting over the business." During the period of March 2007 to December 2008, the Respondent was listed on the paperwork as successor in the interest of the business. He did not inform the Department, pursuant to Patrol Guide section 205-40 that he held a potential ownership interest in this business.

After his Patrol Guide hearing, the Respondent was directed to familiarize himself with the Patrol Guide concerning those types of business relationships within the Department. The Respondent was instructed to either fill out an off-duty employment form or take his name off the business. He chose to take his name off the business, but he only rectified that issue after the problem was brought to his attention. The Respondent is not currently involved in any off-duty employment.

The Respondent lived at [REDACTED] for about two years. At the time, the Respondent was getting a divorce from his first wife and his mother offered him a place to stay. The Respondent stated that he did not know his mother's building was owned and managed by the New York City Housing Authority (NYCHA). The Respondent remained in that building until December 2008. He did not pay rent. He never disclosed his income or the fact that he was living there permanently to the

NYCHA. Upon being asked if his mother was required to list that he was living there and earning income above zero, the Respondent said, "It really didn't cross my mind."

The Respondent left that location after he was called down by the Transit Bureau Investigations Unit (TBIU). The Respondent was told by TBIU that his mother's building was a NYCHA building and if he were to remain there, he had to disclose his income so they could make the appropriate rent adjustment. The Respondent told them he planned on moving out. He entered into an agreement with NYCHA to pay back underpayment of rent. In the last three years, the Respondent paid a little over \$1,000. The Respondent stated he owes a total of around \$4,000 to NYCHA. He currently lives at 2600 Netherland Avenue, which is an apartment complex.

On cross-examination, the Respondent said he started living in his mother's apartment on July 13, 2006. His mother has been residing there for about 13 years. Prior to his living there, the Respondent visited his mother once a week. The Respondent resided with his mother for about two-and-a-half years, plus the visits prior to that, yet he did not know that location was a NYCHA building. The Respondent stated that housing "projects" are different from regular tenement buildings. "Projects" are owned by NYCHA. However, recently NYCHA started buying the smaller tenement buildings, and those have become NYCHA buildings as well. The Respondent stated that to him, "it's just like a regular tenement building."

When asked if there was a sign posted at his mother's building that said, "A Message for Drug Dealers: Stay out of Public Housing?" The Respondent stated that in 15-and-a-half-years, he had not seen this sign. The Respondent stated that when he goes to the building, he goes straight upstairs. The Respondent said, "It's a drug-prone area,

so there's no reason for me to hang out there." He does not pay attention to the signs. He knows what building his mother lives in, so there is no reason for him to stop and read signs. Upon being asked if he did not know he had an obligation to disclose his residency and income to NYCHA, the Respondent said, "I didn't say that I didn't know that I had that obligation. What I said was, at that time, I was going through my first divorce with my ex-wife and I had a lot on my mind...I was paying lawyer's fees, going back and forth to court with her, so disclosing my income, that wasn't on my mind."

The Court asked if, at any point during the time he was staying with his mother, if he came to realize the home was a NYCHA building. The Respondent replied that he did not know. He stated that when he was called down to TBIU, that was when he was informed that it was a NYCHA building. Prior to the Department informing him, he had no idea.

Upon being asked if he knew he was required to disclose his income and residency to NYCHA, the Respondent stated he is aware. To clarify, the Court asked if he knew he was supposed to disclose his residency and income, but did not because he had other things on his mind. The Respondent said he knew he was supposed to disclose his income, but at the time, he did not know that his mother's building was a NYCHA building. Once he knew it was a NYCHA building, he told TBIU he was moving out.

The Respondent had two official Department interviews. The Respondent acknowledged that during the first interview on April 21, 2008, he was told that he was required to disclose his residency and income to NYCHA. At the time of his second interview on November 10, 2008, about six months later, he still had not disclosed his residency and income to NYCHA. The Respondent stated this was because he told them

(NYCHA) he was moving. The Respondent entered into a repayment agreement with NYCHA for money that was owed. Respondent entered into a stipulation with NYCHA for repayment of rent. [Department's Exhibit (DX) 1 is the stipulation NYCHA v. Roberson, dated December 10, 2009.]

The Respondent was shown five photographs of signs from the Frederick E. Samuel Apartments, where the Respondent's mother lives. (DX 2 is a photograph of a sign that states: "[REDACTED]" with "NYCHA" at the bottom of the sign. DX 3 is a photograph of a sign that states: "TENANT PATROL ON DUTY! VISITORS: PLEASE SIGN THE GUEST BOOK. RESIDENTS: PLEASE USE YOUR LOBBY KEY" with "NYCHA" at the bottom of the sign. DX 4 is a photograph of a sign that states: "A MESSAGE TO DRUG DEALERS: 'Stay out of public housing. We'll fight for our homes and our kids.'" DX 5 is a photograph of a sign that states: "NEW YORK CITY HOUSING AUTHORITY EMERGENCY SERVICES" and indicates a phone number to call for emergency repairs. DX 6 is a photograph of a Department of Buildings Certificate of Occupancy with a heading that reads "The City of New York.") The Respondent reviewed the photographs, but maintained that he never saw the signs depicted in the photographs. The Respondent repeated that when he went into the building, he went straight upstairs to his mother's apartment. The Respondent viewed the stipulation (DX 1) and acknowledged that he agreed to pay back the amount listed, \$6,290.

Between March 14, 2007 and December 1, 2008, the Respondent was listed as a partner at "Simplicities." (DX 7 is the Business Certificate for Partners, for Business "Simplicities," dated March 14, 2007.) The Respondent agreed it was his name on the

certificate indicating that he was a partner in the business. He admitted he did not file an off-duty application with the Department indicating his interest in this business.

In his official Department interview, the Respondent said he wanted to be a partner in the business once he retired. By becoming partner, if something happened to his wife, the business would be his. Upon being asked if that is a benefit, that it would benefit him because he would have the entire business, the Respondent replied, "If you would want to look at it like that, I would have lost my wife, but okay." The Respondent did not disclose the business on his tax return. The Respondent stated, "My name was just up there for the purpose if something happened to her, the business would be disclosed to me. I had no say so in the day-to-day operations." The Respondent was a silent partner. After the interview, he removed his name from the business.

On redirect examination, the Respondent agreed that the building his mother lived in was a "rehabilitation" for NYCHA, or what is called a "rehab." This was based on the fact that it was in private hands at one point and subsequently taken over by NYCHA. His mother has lived in the apartment for approximately 15 years. The Respondent was asked his age and stated that he is 43. The Respondent confirmed he was not aware that NYCHA had taken over his mother's apartment at some point. When his mother moved into the building, the Respondent had just started with the Department. Prior to that, the Respondent's mother lived in a privately owned apartment building.

During the time the Respondent lived in the apartment, he did not make rent payments, nor did he give his mother money to make the payments. The building has six floors and there are three apartments on each floor. The Respondent stated if there was

work to be done in the building or the apartment, he did not know who came to do the work.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222, 240 (1974). The Respondent was appointed to the Department on July 11, 2005. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has pled Guilty to the four specifications in this case: wrongfully engaged in off-duty employment without authorization or permission to do so; wrongfully and improperly failed to disclose his residency and income to the NYCHA prior to and while residing in a NYCHA rent subsidized apartment.

The Respondent, after pleading guilty, testified with the expectation of mitigating the Department's penalty recommendation of forfeiture of 35 vacation days. This Court, while accepting his guilty plea, finds his mitigating testimony fraught with attempts to relieve himself of any responsibility for his misconduct.

With regard to off-duty employment, he claims that he had no part in his wife's "Simplicities" business because he performed no work and did not receive any money; yet, his name clearly appears as a partner on the "Business Certificate for Partners" (DX 7) under the section "We do further certify that the full names of all the persons conducting or transacting business in said partnership ...are as follows...." The Respondent's name is then listed along with his wife's below the above certification. He

further claimed that he would only get the business if his wife died and currently had nothing to do with it.

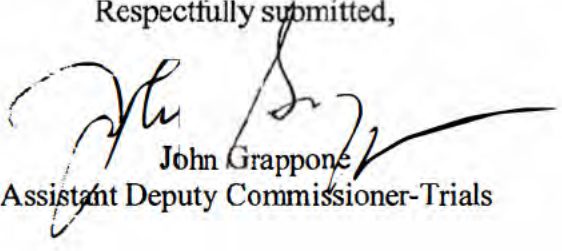
This Court finds that it does not matter what he thought his connection to the business was he was currently a legal partner in that business and the Department should have been made aware of that fact, at the very least to determine if it was appropriate for him to have a connection with that particular organization.

With regard to improperly living in a NYCHA building, the Respondent again was not forthright. Here he claimed that when he lived with his mother he did not know that it was a City-run building and therefore he did not have to report his income and ultimately contribute to the increase in rent.

It is difficult for this Court to comprehend how the Respondent did not know that his mother lived in a City building DX 2, 3, 4, 5, and 6 clearly show that where he and his mother were residing was a City building. Even if by chance he did not see these clearly displayed indicators of City housing, it is hard for this Court to believe that the Respondent, as a police officer, had so little interest in where his mother was living that he did not know this fact.

Accordingly, it is recommended that the Respondent forfeit a penalty of 35 vacation days.

Respectfully submitted,


John Grappone
Assistant Deputy Commissioner-Trials

APPROVED

DEC 07 2010
RAYMOND W. KELLY
POLICE COMMISSIONER

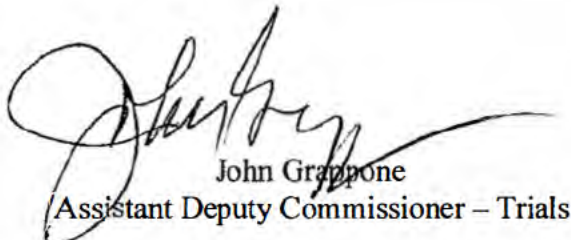
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER WAYNE ROBERSON
TAX REGISTRY NO. 911557
DISCIPLINARY CASE NO. 85413/09

The Respondent received ratings of 3.0 "Competent" on his 2007, 2008 and 2009 annual performance evaluations. He has been awarded one medal for Excellent Police Duty. [REDACTED]
[REDACTED]

The Respondent has been the subject of one prior disciplinary adjudication. In 2003, he was found guilty after trial of discourtesy towards a sergeant for angrily telling him that he was a "fucking clown" twice.

For your consideration.


John Grappone
Assistant Deputy Commissioner – Trials